VISHWANATH IYER

THE INDIAN PRESS

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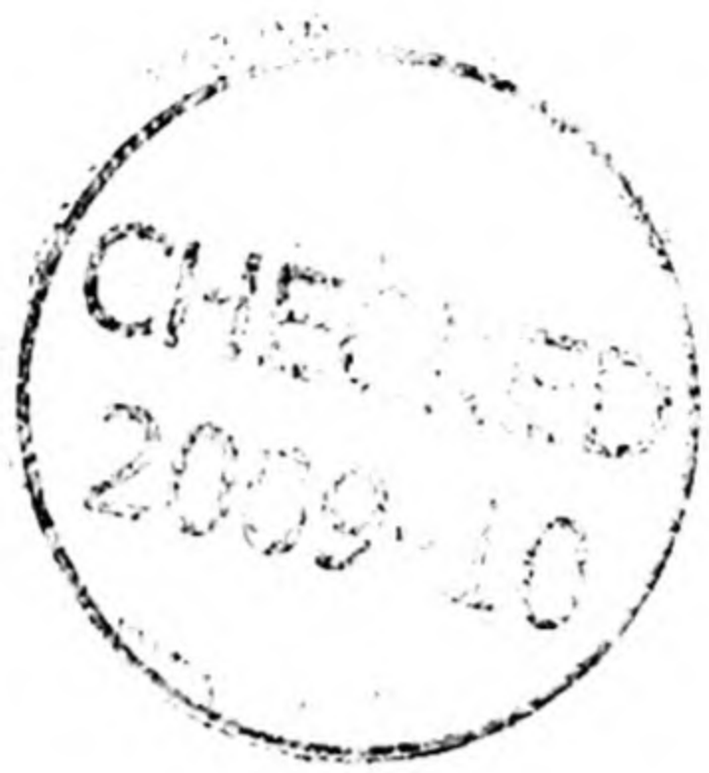
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TWO CENTURIES OF STORM AND STRESS

Newspapers in India had their origin in the needs of the small but growing European colonies sprinkled over the capitals of the Presidency towns. For a century after its founding, Fort St. George had no papers at all; even Britain had practically none. The bill of fare of the earliest of the Madras papers—the three weeklies, *The Government Gazette, The Madras Gazette* and *The Madras Courier*—related to the social life of the community and to "home" news. The papers were subjected to stringent censorship. "These," to quote Sir William Hunter, "uttered their feeble voices in peril of deportation under the menace of the censor's rod."

WHEN EDITORS WERE OUTCASTES

Journalism in those days was hardly considered a profession for decent men. Pulteney's description of the journalist as "a herd of wretches whom neither information can enlighten nor affluence elevate" was one on which the ministers acted. Mr. W. C. Wordsworth of *The Statesman* recently narrated the case of a distinguished freemason recorded in a minute book of the Grand Lodge of England that "this brother afterwards fell into indigent circumstances, and sank so low as to become the editor of a newspaper." The Government of Bengal once contemplated the publication of a newspaper of their

own so that, among other things, they may "put out of existence and needy indolence a few European adventurers who were found unfit to be engaged in any creditable method of subsistence." Of C. H. Clay, the editor of *The Madras Courier*, it is stated, "he had the entry of good society" because he was clerk of the Chief Justice. "To quizz and quibble," writes Munro in his *Madrasiana*, "to quarrel with ceremony and to grumble because not to be allowed to appear in it, were among the attributes of the Madras brilliant. In one column was a deadset against heavy and late dinner, in one adjoining, the mourn of a sub because not invited."

In 1768, William Bolts was deported from Calcutta to Madras *en route* to Europe because he dared to set up a printing press in that city. In 1780, J. A. Hickey's "weekly political and commercial paper open to all parties but influenced by none," *The Bengal Gazette*, was refused transmission through the Post Office; and, after a historic struggle with Warren Hastings, in which the journalist scored some successes, it stood finally crushed. William Duan of *The Bengal Journal*, who was expelled from India, went to America and established a reputation as a newspaperman. Lord Wellesley introduced pre-censorship in 1799. Lord Minto brought into existence the "imprint" system. Lord Hastings, being a believer in a free press, was a patron of Dr. James Bryce's *Asiatic Mirror*. On the complaint of Bryce that the censor had stupidly cut off portions from a critique of a metaphysical work, Hastings abolished the post of censor. To satisfy John Company Directors, however, who were altogether against newspapers, Hastings promulgated bans on certain categories of criticisms such as attacks on the Directors and their officials and such as calculated to create

alarm among the natives. In 1823, James Silk Buckingham, who had become *persona non grata* with the local officialdom, was deported to England ; he lived to enter the House of Commons and wreak his vengeance on his Indian enemies. An ordinance was at the same time passed laying down that no one may own or use a press without licence obtainable only subject to certain conditions. Raja Ram Mohun Roy and five of his colleagues in public life presented a petition to the Supreme court opposing the licensing system. This petition later became famous as the " Aereopagitica of the Indian Press." Roy's efforts, however, failed. On 23rd September, 1823, Arnot of *The Calcutta Journal* was deported, and his paper, as well as another—*The Calcutta Chronicle*—were suppressed for the violation of the Press Regulations.

FROM METCALFE TO MAXWELL

From 1835 to 1910, with but two brief intervals, the press in India enjoyed comparative freedom. In the first-mentioned year was passed Act XI of 1835, inspired by Sir Charles Metcalfe and drafted by Macaulay, which is considered to have established the liberty of the press in India. Lord William Bentinck had deliberately let all the restrictive laws he inherited to fall into desuetude, having thus practically established a free press. Macaulay wrote in his famous minute: "The question before us is not whether the press shall be free, but whether, being free, it shall be called free." The pressure of public opinion had rendered the use of repressive measures embarrassing. In the dark days of the Mutiny, Lord Canning suspended the freedom of the press by Act XV of 1857, which, however, was a measure whose operation was limited to a year. The Act of 1835 was later replaced by the Press

THE PRESS AND THE LEGISLATURE

So long as the law-making limbs of the Government were the Governors' and the Governor-General's Executive Councils, the relations between them and the press of the country were hardly cordial. The Indian legislatures under the Councils Act of 1861 contained no popular element worth mentioning and, despite attempts at liberalisation, they remained till 1909—the date of the Minto-Morley reforms—practically what they were in 1861. It is not surprising therefore that, in this period, the legislature treated the press with no consideration if, indeed, they did not look upon it with contempt not unmingled with hostility. It was in this period that the notorious Vernacular Press Act which was to prove to be the model for subsequent press legislation was passed in the teeth of popular opposition. The freedom which the Indian press regained on its repeal was, however, short lived. For the bureaucracy renewed its attack on it and succeeded in 1908 in getting the Newspapers (Incitement to Offences) Act passed by Lord Minto. Two years later the notorious Press Act of 1910 which struck a fatal blow at the liberty of the press followed.

When, with the promulgation of the Minto-Morley reforms, representative institutions came into being and took the place of the old councils, the press found in them

effective champions who played their part so well that seven years later, on the recommendation of the Sapru Committee, the Press Act was abolished and the Indian Press, theoretically at any rate, once again became free. There were doubtless occasions when the press came into conflict with the legislatures, but these were exceedingly rare. Thus, in the early twenties of this century, the Madras Legislative Council resented attacks on it and its President by *Swarajya* and attempted to explore the possibilities of punishing the offending newspaper by building up a doctrine of privilege. More recently, this doctrine has been set up, though with no better success, in the legislature of one at least of the Indian States. But, generally speaking, the press and the legislatures have functioned in unison, each realising that the other is its help-mate and both claiming to derive their authority from the same source, namely, the public, and exercising it in its interest and for its benefit.

THE RIGHT TO REPORT ASSEMBLY PROCEEDINGS

The spirit of mutual accommodation with which the legislature and the press have gone about their business will be evident from an examination of the occasions in which they seemed to have come into conflict. The legislature recognised the community of interest that subsists between it and the press when it resisted the attempt of the Home Member Sir James (then Mr.) Crerar in February 1932 to maintain that the right of the newspapers to publish the proceedings of the Assembly was subject to the orders of the Executive that may be issued under their Ordinances or Rules. "The right of free speech secured to honourable members of this house by

section 67 (7) of the Government of India Act,'' he said in reply to a question in the Assembly, ''is not affected by any Ordinance. I would, however, point out that the provisions of the section do not apply to the publication of reports by newspapers of which the liability is determined by other provisions of law, including the Indian Press Act of 1931, and by the provisions of the Ordinances, in particular by section 63 of Ordinance II of 1932.'' Sir James suggested, in reply to a specific question, that similar restrictions existed in England also. Mr. Ranga Iyer raised the issue on a motion for the adjournment of the house on the ground that the application of the Ordinances, which had not the sanction of the house, to speeches delivered in the house constituted a breach of its privileges. Mr. Ranga Iyer cited May. '' The privilege which protects debates,'' May says, ''extends also to reports and other proceedings in Parliament. In the case of *Rex vs. Wright,* Mr. Horne Tooke applied for a criminal information against a bookseller for publishing a copy of a report made by a Commons Committee, which appeared to imply a charge of high treason against Mr. Tooke, after he had been tried for that crime and acquitted.'' '' The rule, however, was discharged,'' says May, '' partly because the report did not appear to bear the meaning imparted to it and partly because the court would not regard the proceedings of either house of parliament as a libel.''

Sir H. S. Gour, following Mr. Ranga Iyer, showed how what the Home Member infringed was not the rights of the press, but the privileges of the house. In the first place, he pointed out, Sir James Crerar's interpretation of the law would be inconsistent with the understanding on which the members of the Press Gallery functioned.

"Everybody who comes to the Press Gallery," he proceeded, "*inter alia* is under a duty to publish a fair report of the proceedings of this house." This understanding is based on the doctrine of privilege accepted by the Commons; and any restriction of that privilege by an ordinance would mean a breach of the privileges of the house. Secondly, the restrictions would derogate from the representative character of the House and hence constitute an infringement of its privileges. Sir Hari Singh observed :

"We are all here as representing our constituencies, and the only means of contact between ourselves and constituencies is the medium of the press. Therefore, if our doings are not fairly published in the press and brought to the notice of our constituents, that will derogate from the representative character we possess in this house. Bills and measures are passed every day ; we get telegrams from our constituents as to what action we should take, and when we make speeches for and against a particular measure or a particular bill, we get immediately the approval or disapproval of our constituents. If, therefore, you are to draw a screen between this house and our constituents, you would be very seriously curtailing the right of the elected members to discharge their duty in this house. Therefore, the question becomes not merely a question of the interpretation or the *intra vires* character of any of the ordinances, but it raises the much larger question affecting the very existence of the constitutional rights of the members of the popular chamber and the rights of the people to guide, watch and control our action."

Sir Abdur Rahim pursued the point further. " If the Assembly is to go on with its functions," he said,

"then, I do not see how it can be said that the Government will not allow the debates in this Assembly to be published fully by the newspapers." He proceeded;

" Sir, you have got the power ; if there is any speech which is irregular or seditious made in this house—you can stop it, and the house has got the power to stop the publication of its proceedings if it thinks that it is advisable to do so in the public interest. But I do submit that the Government have no right to stop the publication of the speeches of honourable members simply because they think that in their opinion it will not serve the public interest. If the debates are not allowed to be published, then the position will be reduced to this. This house will be turned into a mere school debating society as was mentioned by one honourable member not long ago. We are here not only to speak to the Government benches opposite, but to speak to a wider audience, the public. This is our privilege, this is our right and this is our duty. We have been sent here for that very purpose, and if we fail in that, if our speeches are not fully reported, then we fail to exercise the very duty to perform which we have been deputed by the people to this house. It will be depriving this house of its only useful function if the Government are to interfere and censor the speeches which are delivered in this Assembly."

In the light of these speeches, the President (the Hon. Sir Ibrahim Rahimtoolah) inquired whether the Home Member would make a statement that "so far as the publication of the proceedings of this house in the newspapers is concerned, no ordinance will affect them." Sir James Crerar replied that the interpretation of law was a matter for the courts and was beyond his province. Thereupon, the President desired the Law Member to

explain the position. Sir Brojendra Mitter requested for time to enable him to give a considered opinion. On his giving a written opinion the next day "that, in my opinion, the ordinances have made no change in the ordinary law of the land in the matter of publication in the public press or otherwise of the proceedings of the legislature," the question was dropped. Thus, in the first round, the honours of the battle were with the Assembly. The position, however, is not quite beyond difficulty. The tendency to interpret the right of publication strictly in terms of the Government of India Act, that is, that the right is confined to publication in the official reports. persists.

The identity of interest between the legislature and the press was recognised in another instance. *The Associated Press* circulated an inaccurate version of the proceedings of the Select Committee of the Assembly on a particular measure. The President made a statement explaining how it constituted an infringement of the privileges of the House and how it was unfair and appealed to the press to co-operate with the legislature in maintaining sound traditions regarding publicity. The appeal had the desired effect and there were subsequently few complaints against the press on this score.

THE RIGHT TO COMMENT ON DOINGS IN THE ASSEMBLY

In the matter of the right of the press freely to comment on the Assembly and its doings, including the action of its President, sound precedents have been laid down.

On 24th August, 1928, *The Times of India* wrote an editorial in which it asked who paid for " the Assembly

President Mr. V. J. Patel's gadding about the country" and asserted "that Mr. Patel does not, like Sir Frederic Whyte, possess a deep fund of expert knowledge and experience of parliamentary practice out of which to give advice and assurance." It also protested, "as a tax-payer," against the expenditure of public funds and expected the tax-payers' representatives in the Legislative Assembly to make sure that no such expenditure was allowed. "For what purpose is it," it continued, "one of those conventions that he pretends to make?" Other sentiments in the article were equally objectionable. Here are some: "That he should presume to go about advising them is another matter; and if it is not such presumption that takes him on tour, for what purpose does he go? Is it politics? . . . Is it merely a way of getting rid of that money with which he likes to be ostentatiously magnificent?" The issue involved in the attack was raised on a motion for the adjournment of the house, but, following the Commons ruling on a similar motion made some years ago to call attention to articles of a scandalous nature which appeared in *The Daily Mail* and other papers relating to the character and conduct of certain members in the house, the President held that it did not affect the Government and no motion under Standing Order II relating to such motions could be raised which did not have relation, directly or indirectly, to the conduct of or default on the part of Government.

PRESS GALLERY RIGHTS

Another occasion on which the Assembly came into conflict with the press was in connection with the creation of a separate secretariat for the Assembly, independent

of the Legislative Department of the Government of India. The President was determined to have a separate secretariat without which the independence of the Assembly. on the analogy of the practice elsewhere, would be tenuous. The Government of India led by Mr. James Crerar, the Home Member, and Mr. Lancelot Graham, Secretary, Legislative Department, so it was understood at the time, were equally determined to torpedo Mr. Patel's scheme. *The Times of India*, *The Daily Telegraph*, *The Morning Post* and some other papers initiated a campaign against the President personally and his scheme. *The Daily Telegraph* Correspondent's messages on the subject were cabled back to India and appeared in the Indian Press. This is what *The Daily Telegraph*'s Simla Correspondent—Mr. Rice—sent to his paper :

" Pandit Motilal Nehru's scheme to outwit Government (by postponing the anti-Communist Bill) succeeded, thanks to the President of the Assembly. . . . President Patel, quite conveniently, refrained from giving Mr. Crerar an opportunity to make an application for the suspension of Standing Orders. The decision given by Mr. Patel is regarded as illogical, to say the least, and it is strongly suggested that it is due to pressure brought to bear on behalf of party interests. It is abundantly clear that the department could not be separated from the Government and placed under the control of a body which from political motives misinterpret rules and regulations warping them to suit party purposes."

The Times of India had published similar suggestions. Here is a paragraph from it : " The Home Member this afternoon made his statement in reply to that by the President in regard to the institution of a separate

Assembly secretariat. A good deal of publicity has been done in preparation for this discussion in order, apparently to prejudice the Government position. Your correspondent makes no suggestion that this publicity was inspired by anybody. When the subject began to fill the air sometime ago, he asked in a proper official quarter whether any information could be vouchsafed about it and was given, as a courtesy to the Assembly President, a polite but decided answer in the negative.'' *The Pioneer* stated that the whole campaign against Mr. Patel was due to certain Government circles. '' No one would mind the intensity of the combat if it were being fought cleanly, but your correspondent is reluctantly forced to call to your attention certain features and tactics which must be denounced. There can be no doubt that a definite move in the Government game is the discrediting of the authority of the Chair.'' '' Long suspect,'' he continued, '' he, (Mr. Patel), is now openly accused in the Government lobbies by officials of being partial. ' It is a put up job,' was the comment of one official member on Pandit Motilal Nehru's point of order on the Public Safety (anti-Communist) Bill. ' Patel is dead against us.' ''

There is no question that the above accusations constituted gross contempt of the Chair. The attitude of the Government, however, was significant. Mr. Crerar asserted the right of the press, subject to the law of the land, to criticise the conduct of all. '' As regards the general question of comment and criticism,'' he said, '' that may very well be a matter for the consideration of the house but it is not one for which I, either personally or on behalf of the Government, can assume a responsibility to reply, to criticise, to approve, to disapprove, to

associate myself or dissociate myself." "In spite of what has been frequently urged in this house," he continued, "the press of this country is a free press and any comment contained in that press so long as it is within the limits of the law, is not a matter with which Government or any individual member of Government can concern himself." "It is impossible, Mr. President," proceeded Mr. Crerar, "for any one in a high public position, so high, so responsible and so important as your own, to secure that in the exercise of his powers no complaint should ever be made against his decision or that no one should ever be aggrieved." Mr. Crerar added that so far as the Government were concerned, they were not influenced by such complaints against the President and were anxious to uphold the dignity of the Chair. He maintained that *The Pioneer's* assertion that Government or any official members there present had any participation in the alleged false propaganda was false *ab initio* and *in toto*. On this, President Patel wrote to the editor of *The Pioneer* requesting him to give him the source of his information. Mr. Wilson, the then editor, while politely refusing to do so on the ground of journalistic etiquette, re-affirmed the charge that some Government officials inspired the propaganda against the President. These facts are significant so far as the freedom of the press is concerned. Its right to criticise and expose every kind of injustice and give expression to grievances as against all—whether it be the Assembly, its President, the parties in it or the Government or high officials—was recognised. Mr. Cocke, the representative of the European group, appeared in the unusual role of a champion of the press. "As to your relations with the press, Sir (the President)," he said, "I agree with the honourable the Home

Member that it is not a matter upon which he (Mr. Crerar) would have any right to criticise, unless those comments over-stepped the bounds of fair comment. We have a free press in this country and personally I am all against restricting comment.''

The cordiality of the relations that obtained between the press and the Assembly in spite of the controversy is evident from the statement which Mr. K. C. Roy, of the Assembly Press Gallery, made on the occasion. He said :

'' I repeat the view of the pressmen in the Press Gallery that this (*The Telegraph* charge) is a malicious libel on the President. For some time past, the conduct of a few press men has been a matter of no little concern to me. I have been very anxious about their conduct and I have been making anxious enquiries. My enquiry was first addressed to the most senior member of the Press Gallery who has served the Central Legislature for forty years, and this is what he wrote to me :

' In reply to your query, I am extremely sorry that Mr. Rice who has recently joined the Press Gallery should have sent a telegram to a home paper reflecting on the fairness of a ruling by the President, Mr. Patel.

' After attending legislature meetings for nearly forty years I can only say that I regret the bad taste of a brother journalist, and I put his action down to his youthful inexperience of Assembly etiquette. Mr. Patel has always been most courteous and considerate to those in the Press Gallery, and the incident, to say the least of it, is most regrettable. I think this letter fairly reflects the general opinion of the Press Gallery.' ''

Mr. Roy proceeded to point out what he thought of the whole affair. He said :

'' I consulted several Indians who are also senior in

the profession, and they have endorsed the view taken by Mr. Buck (*Reuter* representative) who for forty years has served this legislature. In the circumstances, Sir, if you take any notice of the delinquents, they will fully deserve it and you will have nothing but the heartiest support from the press in India, both European and Indian. I have often heard allegations made regarding Indian press men, and the present Under-Secretary of State, Lord Winterton, speaking in the House of Commons, described Indian press men as gutter snipes of the press. I should like to tell Lord Winterton where to look for them.''

As a result of the debate, the Home Member made another statement after a week in which he said that, having been taken by surprise, he spoke on the earlier occasion in less considered terms than he would have wished. He expressed the complete confidence of the Government in the Chair, condemned "all allegations and comments, in the press or elsewhere, that may appear directly or indirectly to reflect adversely upon the impartiality of the Chair and promised the full support of the Government to the Chair in any action that the President might think it right to take to vindicate the authority of the Chair in the matter of the reflections then under discussion.''

The President made a statement in the Assembly on 25th September announcing his decision in the matter. He agreed with the leader of the Opposition that the statements of the correspondents complained against were a violation of the privileges of the House and proceeded :

"I am always unwilling to take any disciplinary measure against the press men and, therefore, have delayed passing any orders in this case so long in the hope that

the Correspondents concerned might see their way to tender to the Chair and the House their unqualified apology. Not only no apology came, but one of the Correspondents added insult to injury by writing to me that his comments were based on the remarks made by members of several parties in the House, as if that was any justification for the comments he made, even if true. I fully appreciate and recognise the general support I have received from the press in India in the discharge of my difficult duties, and if I take any action in this case it is because I am driven to it by the Correspondents themselves."

President Patel concluded his statement pronouncing the action he contemplated to take. He said :

"In these circumstances, I hereby direct that with effect from the date of the adjournment of the House *sine die* the press passes granted to Messrs. Byrt (of *The Times of India*) and Rice (of *The Daily Telegraph*) shall stand cancelled, and no notice papers, bills, etc., shall be sent to them until further directions from the President."

Thus ended an episode which, if it asserted the right of the House to punish contempt of the President, also established the right of the press to criticise the Assembly and its President subject only to the legal consequences thereof. It is true that the Correspondents concerned were deprived of privileges valuable to them. This, however, was done only after the fullest public investigation into their action and the freest statement of their case in the Assembly by the stoutest of their champions. Although the press men lost their case, the incident was a great victory for the press ; for it established its right to offer legitimate and strong criticism provided this was done in

good faith and without malice. It must be remembered, moreover, that it left intact the legal remedies open to the press, if it cared, to assert its right to facilities for reporting the public doings of the legislature.

THE DAILY GAZETTE EPISODE

The attempts of the Assembly to interfere with the freedom of the press to comment on men and matters not directly connected with itself failed even more completely. Some time in 1932, *The Daily Gazette* of Karachi wrote certain articles which were very bad attacks on the Congress and Congress leaders. It advocated " indiscriminate award of flogging punishment to civil disobedience offenders below the age of 18 " and had remarked that " buttocks are created or intended by nature for flogging." " Most people feel," it wrote on the 19th August 1932, " that Gandhiji should be well smacked on part of anatomy, nature has specifically provided for the purpose. Unfortunately, he is too old for the type of treatment to prove of any use—certainly his latest antic smacks of a silly old man entering his second childhood. The writer feels disappointed at the impossibility to inflict flogging on Mahatmaji owing to his old age and not because of its cruel nature."

Non-official members raised the issue in the Assembly over an adjournment motion holding that it was provocative and calculated to promote class hatred and discontent. The European group's view was reflected in Mr. F. E. James's speech. He said the articles " were in bad taste, foolish and petulent " and that " when anything is said in a widely circulated press which is either petulent, or foolish or in bad taste, and specially when those remarks are addressed to a person who is held

in great veneration by the whole of India, then, obviously they are unfortunate and nobody in his normal senses would justify their publication in any responsible journal.'' But the best action against them was to leave them alone. Sir Harry Haig, the Home Member, was of the same view. '' The tendency of modern journalism all over the world,'' he said, '' is, in the effort to be bright, too often to pass the bounds of good or even reasonable taste, and occasionally, I fear, to lapse into vulgarity.'' Sir Harry suggested the article should have been left in the obscurity which it deserved. '' No one wants writings of this sort to multiply,'' he added : '' but the question of taking legal action is quite a different matter. I am certainly not prepared to make any suggestion to the Bombay Government that any kind of legal action should be taken.''

The motion was talked out and the liberty of the press, freely to criticise public men without any interference on the part of the legislature, stood vindicated even though *The Gazette*, to quote its neighbour, *The Sind Observer*, had '' crossed all bounds of journalistic decency and decorum by indulging in a vituperative outburst against Mahatma Gandhi.''

JUDGES AND JOURNALISTS

The relations of the press in India with the law-interpreting arm of the Government, namely, the judiciary, are not as satisfactory as those with the law-making limb. The reasons are not far to seek. The refusal of the Government to separate judicial from executive functions led the public to draw inferences adverse to the independence of the judiciary. The concentration of the controlling and supervising power in an authority the composition of which in the earlier years at any rate was

heavily loaded in favour of the European element served to create an apprehension that judicial pronouncements might be coloured by racial considerations—an apprehension which some judicial decisions deeply strengthened.

In spite of these drawbacks which affected only a very small though vital sphere of the judicial field, the Indian public has learnt to value highly the contribution of British courts of justice to the broadening of the liberty of the subject. India has had the benefit of the great common law principles concerning the freedom of the citizen and the efficient working of the jury system of trial *per legale judicium parium* in the direction steadily, constantly and continuously of keeping the law in step with public opinion, the principle of rule of law, of which publicity through reports of open trials is an essential element, has been a potent safeguard of the freedom of the press ; and one of the most deeply felt grievances of the press is the progressive discarding of this principle in various ways. Courts have often been deprived of their jurisdiction in respect of political cases ; summary trials have been substituted for regular trials, not seldom with refusal of open trials ; rules of evidence have been changed wherever they stood in the way of the executive and the well-considered provisions of the great codes set aside in favour of special *ersatz* laws. The executive, in short, has acted and been acting as if the British system is unsuited to a dependency.

The consequence is that, though in many cases the forms still are those of the British system, the substance and the spirit are often such as are inconsistent with the British and, indeed, with any democratic system. The effect of these gradual changes has been reflected in the trials of newspaper editors, writers and publishers, notably and

in particular with references to cases of contempt. In this field as in some others, the English traditions we have inherited have been applied to our disadvantage.

LAW OF CONTEMPT IN ENGLAND

In England, the courts at Westminster may, in theory, construe what they please into contempt of themselves, and may, without trial by jury, convict subjects of that crime and visit the offender with unlimited punishment by way of imprisonment as well as of fine. These sentences moreover are unappealable and unexaminable. The only safeguards against the tyrannical exercise of so arbitrary a power are the wisdom and moderation of the judges themselves and the danger of abuse of such power as illustrated by what happened to the Star Chamber. The case against *The Bengalee* in the eighties showed that in India, too, the law was deemed to be the same as in England. "Nobody knows exactly," says Mr. Wickham Steed of the position in England, "what comments upon the conduct of a trial may render a newspaper liable to conviction for contempt of court." In England, however, law moves quickly in sympathy with public opinion. So early as the eighties of the last century, Lord Bramwell said of the conditions in that country that when a judge took notice of contempt in a newspaper article, "it generally happens that the offender apologises and there was an end of the matter." This tendency for the judiciary to treat the press with high considerations deepened with years. Lord Russell laid down in a leading case in 1906 "that judges and courts are alike open to criticism and if reasonable argument and expostulation are offered against any judicial act as contrary to law or the public good, no court would or could treat that as contempt of

court.'' This was followed by Lord Atkin's famous judgment in 1936 in *Ambard* vs. *Attorney-General for Trinidad and Tobago.* " Provided that the members of the public abstained from imputing improper motives to those taking part in the administration of justice and of generally exercising a right of criticism and not acting maliciously or attempting to impair the administration of justice,'' observed his lordship, " they are immune. Justice is not a cloistered virtue.''

In spite of the fact that the law is interpreted so liberally by courts, there has long been a movement in England to get the law changed. The press still feels bitterly that in the trials of contempt cases, " the court is still party, judge, jury and witness in its own cause.'' The House of Commons as early as 1906 passed a resolution stating " that the jurisdiction of judges in dealing with contempt of court is practically arbitrary and unlimited and calls for action of parliament with a view to its definition and limitation.'' " The present procedure,'' writes Mr. Wickham Steed, " is calculated to deter, and does deter, newspapers from offering reasonable criticism upon so important a matter of public interest as the administration of justice.'' The authors of the P. E. P. publication, *Report on the British Press,* who have made a thorough investigation of the problem have recommended that all cases of contempt " should be referred to the Director of Public Prosecutions and tried by jury in the normal way.''

THE POSITION IN INDIA

In India, the position is even worse. " The liberty of the press,'' wrote *The Statesman* (in 1883) commenting on *The Bengalee* Case, " in the way of criticising the

conduct of high court judges is just so much as the judges, for the time being, please to allow it, and no more. A judge of the high court thinks (rightly or wrongly) that something in a newspaper regarding himself is contempt. A rule is issued against the paper without warning. At two days' or, if the judge pleases, a single day's notice, the accused has to appear. He is charged with contempt of court, but there is no legal definition given of his offence ; no law is specified as sanctioning the proceedings of the court ; no precedents are cited. There is nothing but the opinion of the judges to decide whether what he has written is contempt or not. The judges are at once plaintiffs, prosecutors and judges. Their own discretion is the sole guide as to the amount of the penalty."

Certain changes have been effected in the law since the above was written. Under the Contempt of Courts Act of 1926, the jurisdiction of high courts to punish contempts of themselves and of courts subordinate to them and of chief courts to punish contempts of themselves has been recognised. The Act lays down that the courts may award sentences of imprisonment of six months simple and a fine of Rs. 2,000/-. In one direction, the Act is thus an improvement inasmuch as it places an upper limit on the punishment. Seeing, however, the upper limit is very high—the only case in India where the courts have exceeded this punishment was the *Kelkar Contempt Case*, he having been fined Rs. 5,000/- for contempt—the Act cannot be regarded as satisfactory. Another reactionary provision in the Act is that it empowers the High Court to punish contempts of court subordinate to them also. It has, moreover, left the offence undefined. For these reasons, it cannot be said that it has in any way resulted in a substantial gain to the press.

NEED FOR REFORM

The law in India requires to be reformed in two or three directions. In the first place, the offence of contempt should be clearly defined. A non-official bill promoted by Mr. Akhil Chandra Dutt in the Indian Legislative Assembly in November 1940 defined contempt by adding the following sub-section to Section (1) of the Act of 1926 : " Whoever, by words either spoken or written, or by signs or by visible representation or otherwise, interferes with or obstructs the administration of justice in a court during the pendency of any case therein shall be deemed to commit a contempt of court." The essence of direct contempt is comment on a pending action which may prejudice a fair trial of it or which is calculated to interfere with or obstruct the administration of justice. Such contempt, in which a judge is not a party directly concerned, may be tried by the judge himself. Even here, care should be taken not to extend the doctrine to such an extent as to prevent legitimate comment on the administration of justice. Other kinds of contempt, constructive contempt so called, including the scandalising of courts, should not be allowed to be tried summarily, but should be treated as defamation or libel on the judge. " The powers of the court," Mr. Dutt says in the Statement of Objects and Reasons appended to his Bill, " are now extraordinary, uncontrolled and unfettered. But even a judge of a high court is a human being and not a superman. The prosecutor himself should not be the judge of the accused. Besides, there should be all the safeguards of a regular trial."

The importance of public discussion and criticism of public issues has been realised by thoughtful statesmen to be so great that modern tendency is to allow the greatest

freedom to the press consistent with fairness. In a case decided in his days, Lord Coleridge laid it down that " if the decencies of controversy are observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy." In the circumstances, there is no reason why the law of contempt should not be brought into line with the law of libel. While the Penal Code provides for the punishment of defamation, it also lays down that it is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions or respecting his character so far as that character appears in that conduct, and no further." Whatever criticism of the judiciary is made in good faith, without malice or wilful misrepresentation and for public good should be freely permitted. What Sir Richard Garth laid down in *The Bengalee* case as constituting contempt was " attacks upon the conduct and character of high court judges if not made in good faith." Likewise, in *The Englishman* case, what Sir Barnes Peacock condemned was " false accusations founded on wilful misstatements." " I do not claim for myself," he said, " any immunity from unsparing criticism for any of my public acts, but all I claim is that there shall be no wilful misrepresentation or concealment of facts."

It is also necessary that the terms " in good faith," " without malice," and " for public good " should not be interpreted unduly narrowly. " Good faith," in legal parlance, " means the exercise of due care and attention." In *The Bengalee* case, the judges held that the accused had not taken due care and attention because he accepted as true statements made by another paper without enquiring into their accuracy. This test is wrong. " There is

not a newspaper in India,'' as *The Statesman* (May 7, 1883), wrote, " which does not almost daily accept statements on the authority of some contemporary and if we were precluded from doing so until we had first ascertained from original sources the correctness of such statements, the work of journalism would be seriously hampered.'' The duty of the writer should be limited to seeing whether there was anything in the statement he proposed to accept which suggested that further enquiry was necessary, some *prima facie* impossibility, " some reason for doubting the credulity of the writer.'' *The Bengalee* reproduced a statement from a reputed journal, *The Brahmo Public Opinion,* edited by a well-known gentleman, himself an attorney of the Calcutta High Court. The representation in such a case should not have been taken as not having been made in good faith. In *The Searchlight* case, the High Court held that if the writer felt that a judge had given an incredibly wrong decision, he must, before criticising the judgment, make enquiries of the judge. " It is somewhat shocking,'' wrote Terrel, C. J., " that any one should, on a mere perusal of the judgment and without further enquiry, come to the conclusion that any judge could convict a person after having expressed a doubt of his guilt of the offence charged.'' This is laying down as a matter of law that when a judgment creates some confusion in the mind of a man, it is his duty to make proper enquiries, that is, enquiries of the court itself ! The suggestion by a judge that few else, unaided, can interpret his judgment correctly is hardly fair to himself . No judge has a right or power to interpret his own judgment save by subsequent hearing ; and he may correct, expand, amend or elucidate it only by a further hearing if, indeed, that will be in order. No

journalist could hope to establish his good faith that way.

THE ESSENCE OF CONTEMPT

The offence of contempt should be so defined that its essence is an imputation of moral obliquity. As Pandit Motilal urged in *The Searchlight* case, the moment a case has been decided, the judge and the jury submit themselves to the criticism of the public. "That criticism, so far as it is reasonable, does not conceal anything and does not misrepresent the judges to such an extent that it must necessarily mean that they are being held up to ridicule or contempt and attacks the integrity of the judges or their fairness or impartiality ; in other words, unless there is an imputation of moral obliquity in regard to a case which has been decided, such criticism will not be contempt of court. It may amount to libel of a judge, but where every contempt must also be libel, every libel is not a contempt. There may be slight misrepresentations which may be either accidental or even intentional and which lead to no inference one way or the other if it thereby does not create an impression against the integrity of fairness or impartiality of the judges." It may be mentioned that the comment of Terrel, C. J., on this exposition of the law was : " I do not think you can put it more fairly."

The law of contempt should be modified on the lines suggested above if it is to be consistent with the liberty of the press.

THE DAMOCLES' SWORD

The right of the press to criticise the actions of the executive in India is restricted in many ways ; and there are many weapons in the executive armoury to use against

it. Section 124-A of the Indian Penal Code is perhaps the most important, enabling it to punish the newspapers, while Section 108 of the Criminal Procedure Code is available in case of need as a preventive measure.

Section 124-A of the Indian Penal Code runs : "Whoever, by words, either spoken or written, or by signs, or by visible representation or otherwise, brings, or attempts to bring, into hatred or contempt, or excites, or attempts to excite, disaffection towards Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term."

There are three explanations to the section. Explanation I says that "the expression 'disaffection' includes disloyalty and all feelings of enmity." Explanation II says : "Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section." Explanation III runs : "Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section."

The terms 'disaffection,' 'hatred' and 'contempt' have been defined in *The Bangabasi* and *Tilak* cases. "Disaffection" means, according to Petheram, C. J., "a feeling contrary to affection." It includes, as defined by Strachey, J., "hostility, contempt and every form of ill-will." In other words "if a man says something which may in some remote contingency create some small ill-feeling against the Government—it does not matter how small it is, it does not matter whether it was actually created or not—the man," according to one commentator, "is guilty of sedition." The explanation does not help a critic in any way. "It does not apply to any writing," Strachey, J., observed, "which consists not merely of

comments upon Government measures, but of attacks upon the Government itself . . . its existence, its essential characteristics, its motives, or its feelings towards the people.'' A writer will be guilty under the section of exciting contempt and hatred if he attributed to it " every sort of evil or misfortune suffered by the people, or by dwelling severely on its foreign origin or character.'' Any comment " accusing it (Government) of hostility or indifference to the welfare of the people '' will bring the writer within the mischief of the section. In *Emperor* vs. *Satya Ranjan Bakshi,* it was held that " it is quite possible by the abuse of Government officials as officials to make an endeavour to bring into hatred or contempt the Government as established by law '' so that " even criticism strong, though well deserved, of officials will bring the speaker or writer within the mischief of this section.'' In 38, Calcutta, Chatterji and Richardson, JJ., held that certain articles were seditious because one clear idea ran through them—" that the Government does not care for ascertaining the real truth about the grievances which exist, especially about the administration of justice.'' It may be mentioned that the comments of the writer were provoked by a speech made by the Chief Justice of the Punjab in which he referred to bribery and corruption being rampant in courts of justice talking of ministerial officers only. That is to say, as the law stands, even " a true and fair comment on a true state of affairs is to be considered sedition.'' In a case reported in *All-India Reporter,* Patna, 1925, p. 99, it was held : " The ascription to the Government of the object, as a root principle, to divide the races of India so as to strengthen its rule and destroy the language, culture, trade, commerce, arts and industries by strangling regulations, as well as the

description of the Government as a Government which rules by brute force in an arbitrary manner over a people who have no voice in the administration, cannot fail to cause a feeling of disaffection and contempt, if not hatred, in the minds of the Indian reader.'' Even the adoption of a phrase like '' the Punjab atrocities '' may be seditious if the intention is to stir up disaffection against Government though this phrase may be commonly used by portions of the public.'' The reference to intention is no protection in the case of Indian writers '' because intention may be presumed if the natural and necessary consequence of the words employed is to bring into hatred or contempt the Government or to excite disaffection.'' (Gour). The illusory nature of this proviso will be realised when the case, *Rex* vs. *Sullivan*, is remembered, in which it is stated : '' the mere assertion of a grievance tends to create discontent which, in any case, may be said to be seditious.''

INCONSISTENT WITH RESPONSIBLE GOVERNMENT

There is one aspect of the law of sedition to which adequate attention has not yet been paid. It is its bearing on the functioning of responsible government in the Provinces. The essence of such a system of government is the right of the party in opposition to discredit the party in power. The law as it is now interpreted permits only criticisms of the measures and actions of Government ; it penalises comments meant to secure a change of Government. In such conditions, electioneering propaganda, as Mr. Satyamurti pointed out in his speech on his Repressive Laws Repeal Bill, will become impossible. '' Supposing I go and say

that this Government has piled unjust taxes upon unjust taxes, this Government is misspending the public money, this Government is making bad laws, this Government does not put down corruption in its own ranks, this Government does not vindicate the rule of law—am I not,'' he asked, '' bringing the Government into contempt ?'' '' It is impossible to criticise the actions of a Government continuously,'' he added, '' so strongly as to withdraw all support from them without coming within the mischief of this section.'' This is the more so because it has been laid down by Casperz and Chitty, JJ., (35 Calcutta, 141), that '' it is the duty of every citizen to support the Government established by law and to express with moderation any disapprobation he may feel of its acts and measures.'' You cannot, further, attribute, under the present law, improper motives to Government which is a matter of everyday occurrence in electioneering in parliamentary democracies.

The term '' Government established by law '' has been defined so as to include the executive of the Government and the Ministry. This position is incompatible with electioneering on democratic lines with a view to getting a Ministry which has lost popular support displaced by another enjoying it. In the matter of *Sojoni Kanta Das* and in the matter of '' *India in Bondage : Her Right to Freedom,*'' Rankin, C. J., and Suhrawardy and Pearson, JJ., held that '' any advocacy regarding change in the form of government as will bring into hatred or contempt or excite disaffection towards the present Government comes within the mischief of Section 124-A.'' '' People who are so unfortunate as to be unable to advocate change in the form of Government without attempting to bring it into hatred or contempt or to excite dis-

affection towards the Government established by law," their lordships held, " have not been specially favoured in the legislature either by the terms of the section itself or by the Explanations. They may take their grievance, if any, to the legislature, but the section, while it stands, must be interpreted according to the plain and natural meaning of its words."

It may be contended that there are safeguards against the abuse of the section. One of these is that a prosecution is made subject to the sanction of the Provincial Government. This safeguard has been in practice found to be worthless. Thus, in a Lahore case (*All-India Reporter*, 1930, Lahore, p. 892), the Government sanctioned the prosecution of one Ramsaran Das for his criticism, among other things, of the appointment and composition of the Simon Commission and for his remarks that " the Commissioners travelled in comfort to Bombay and other big cities, but did not visit the villages where there are no roads, no hospitals for men or cattle to get medicine from, or schools, where insanitary conditions prevail or malaria rages, and for this reason they are not likely to form a correct estimate of the poverty of people living in rural areas." The large number of prosecutions that have been launched shows how this safeguard has proved illusory.

The position of the press under Section 108 of the Criminal Procedure Code is equally bad. It is a Section intended to enable the Government to take preventive action against writers charged with sedition and empowers magistrates to bind them over and demand security for their good behaviour.

AMEND THE SEDITION LAW

With the object of remedying this state of things, more than one Bill has been framed by non-officials—by Messrs. Kelkar, Rangaswami Iyengar, Ranga Iyer and, lastly, Satyamurti. Mr. Satyamurti's bill is by far the simplest ; for, by adding half a dozen words to the existing section, it serves to bring the law as far as possible in accord with that in Britain.

As amended by Mr. Satyamurti's bill, Section 124-A will run :

Whoever, with the intention of promoting physical force or violence or public disorder, by words either spoken or written or by signs or visible representation or otherwise, brings, or attempts to bring, into hatred or contempt, or excites, or attempts to excite, disaffection towards His Majesty or the Government established by law in British India shall be punished with transportation for life or for any shorter term.

After citing a number of well-known authorities, Mr. Satyamurti pointed out in his speech in the Assembly on his bill how, in the light of the texts and judicial decisions, the essence of sedition is attempt to promote public disorder. " The word ' sedition ' in its ordinary natural signification," wrote, Coleridge, J., in *Rex* vs. *Aldred* " denotes a tumult, an insurrection, a popular commotion, or an uproar ; it implies violence or lawlessness in some form ; but the man who is accused may not plead the truth of the statements that he makes as a defence to the charge, nor may he plead the innocence of his motive. The test is not either the truth of the language or the innocence of the motive with which he published it, but the test is this : Was the language used calculated, or was it not, to promote public disorder or physical force or violence in a matter of State ?"

In England, the content of the law has considerably changed with public opinion and, whatever may have been the case in the past, "it is now extremely seldom," to quote Lord Hewart, (*The New Despotism*), "that any attack on the Government or on either House of Parliament is treated as seditious and the constitution is frequently abused with impunity. In the absence of a tendency to cause a riot or a rebellion or to disturb the peace of the king, the greatest latitude is permitted in the discussion of political affairs." "A strict application of the law as here (in the text-books) defined," says Mr. Thomas Dawson in *The Law of the Press*, "would make the profession of a writer on politics a somewhat hazardous one, since many political journalists are actively engaged in trying to bring the Government of the day into hatred or contempt and promote a feeling of hostility between different classes. The fact that the jails are not full of journalists, however, indicates that there is some divergence between legal theory and practice."

The real safeguard in England against failure of justice in cases of sedition is the existence of the jury. The law of seditious libel, observed Coleridge, J., in *Rex* vs. *Aldred*, "is liable to be abused, and if it is abused, there is one wholesome corrective and that is a jury of Englishmen." And what do the judges and interpretors of the law expect of jurors ? In *Rex* vs. *Richard Piggot*, reported in 11 Cox's Criminal Cases, Baron Dicey observed in his charge to the jury :

Jurors have too much interest in the freedom of the press to sanction any encroachment upon that freedom and they ought to give the greatest latitude to any writing brought before them. It would be better that a journalist should escape from the consequences of his act than that a writer should write under a dread of punishment.

The law of sedition in India should be reformed so as to bring it in accord with that in Britain.

PRESS PUT IN FETTERS

When, in 1910, Lord Minto succeeded in securing the Indian Press Act of that year passed, the Indian Press lost its freedom. The essence of that freedom is not the right to print anything it wanted with impunity, but the right to publish whatever it desired without previous licence but subject to the consequences of law. (Mansfield, C. J.) Such a licence is inconsistent with the common law principle that men are to be interfered with or punished, not because they may or will break the law, but only when they have committed some definite assignable legal offence (Dicey). By laying down that the executive may demand security from any one before he was permitted to set up a press or publish a newspaper, the Act of 1910 violated this great principle ; and the Indian Press ceased to be free. The blow was a calculated one. Lord Minto did not hide the fact that what he sought to do was not either to punish wrong-doers or even to prevent them from wrong-doing, but to impose executive control over the press.

The new *avatar* of the Act of 1910—the Press (Emergency Powers) Act of 1931, based on Lord Irwin's Ordinance of the previous year,—only extends the principle of the Minto Act to the furthest possible limits. Lord Irwin stated in promulgating the ordinance that the repeal of the 1910 Act had proved to be unwise and that it should be re-enacted in order to deal with the Non-Co-operation Movement effectively. The Act empowers the executive to demand a security in advance of setting up a press or publishing a newspaper and forfeit it if, in its opinion,

the depositor of the security had offended against any of the provisions of the Act. These provisions are comprehensive and are contained in Section 4 which runs :

4. (1) Whenever it appears to the (Provincial Government) that any printing press in respect of which any security has been ordered to be deposited under Section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which—

(a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, or

(b) directly or indirectly express approval or admiration of any such offence, or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence,

or which tend, directly or inidrectly,—

(c) to seduce any officer, soldier, sailor or airman in the military, naval or air forces of His Majesty or any police officer from his allegiance or his duty, or

(d) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government, or

(e) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security

or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or

(f) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or to commit any offence, or to refuse or defer payment of any land revenue, tax, rate, cess or other due or amount payable to Government or to any local authority, or any rent of agricultural land or anything recoverable as arrears of or along with such rent, or

(g) to induce a public servant or a servant of a local authority to do any act or to forbear or delay to do any act connected with the exercise of his public functions or to resign his office, or

(h) to promote feelings of enmity or hatred between different classes of His Majesty's subjects, or

(i) to prejudice the recruiting of persons to serve in any of His Majesty's forces, or in any police force, or to prejudice the training, discipline or administration of any such force.

It will be noticed that the section brings within the scope of the Act almost all subjects on which the press has need to comment. Clauses (a) to (d) deal with objectionable publications to punish which there are ample provisions in the penal law of the country — the great Codes, the Police and Military Acts and Regulations. Clauses (e) to (h) introduce new categories of press offences. They make it penal for the press what is not penal for other citizens. The clause concerning exhortations addressed to public servants is such that even advice to a single public servant to resign his office on a most

legitimate occasion, such as, for instance, when he is incapable of executing the duties of his office, will make Section 4 applicable. " Frankly speaking," observed Mr. A. Ramaswami Iyengar in his presidential address at the All-India Press-owners' and Journalists' Conference in Bombay in 1930, " it is impossible for any newspaper or press seriously to attempt to escape the provisions of this Act once the Government, with the Intelligence Department and the Secret Services that move it from behind, makes up its mind to take action against it and no power on earth can prevent the ruin of the press and the newspaper once the Government decides to bring it about."

That the so-called safeguard provided in Section 25 of the Act, which provides for an appeal to the High Court, is altogether illusory is easily seen. The Section runs :

If it appears to the Special Bench on an application under sub-section (1) under section 23 that the words, signs or visible representation contained in the newspaper, book or other document in respect of which the order in question was made, were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order.

How worthless this safeguard is to the generality of journalists has been well pointed out by Sir A. Ramaswami Mudaliar. " For a small journalist," he observed in the Assembly in the debate on the States Protection Bill in 1934, " whose security has been forfeited or whose press has been forfeited, to go after the event to the High Court and try to have his case argued is not always an easy matter ; and the High Court, as has been shown, is helpless in these matters. The High Court cannot really go behind the decision of the executive and they have no materials placed before them whereby they can judge

whether this was intentionally done, whether it could create disaffection, and so on. Therefore, ultimately it comes to this that it is not even an alternative remedy. It is the sole remedy and the executive becomes the judiciary. That, I submit, is the worst form of combination."

JUDICIARY PUT OUT OF ACTION

The helplessness of the judiciary in the face of such a provision has been more than once illustrated. In *The Comrade* case, the Advocate-General conceded that Moulana Mohammad Ali's pamphlet was not seditious; the judges held in *New India* case that the intentions of the editor were praiseworthy and meant to strengthen British authority. But such defence did not avail them. Nor will the truth of the criticisms or its fairness save the victims of the Act.

In *The Comrade* case, under provisions of the Act of 1910, which the Act of 1931 has copied, the Advocate-General argued :

"I admit the pamphlet is not seditious in its nature and is quite outside the scope of the Penal Code, and I am willing to concede that the petitioner was actuated by the best motives. But the scope of the Indian Press Act is far wider than that of the Penal Code. The provisions of section 4 are extremely comprehensive, and the onus is cast on the petitioner to establish the negative that it is impossible for the pamphlet under any circumstances to come within the purview of the section."

Of Section 4 of the Act, Sir Lawrence Jenkins, C. J., stated in his judgment in *The Comrade* case :

"It is difficult to see to what lengths the operation of this section might not be plausibly extended by an ingenious mind. They would certainly extend to writings that may even command approval. An attack on that degraded section of the public which lives on the misery and shame of

others would come within this wide-spread net : the praise of a class might not be free from risks. . . . The onus is laid upon the person whose security has been forfeited to prove that the publication selected by the Government at their own discretion may not have the tendency described in the various clauses. This is not only reversing the ordinary procedure in trials, but the difficulty of proving such a negative as this must in many cases be insurmountable."

It is easy to see how the Section causes hardship. If the appellant should undertake to produce witnesses to prove that the words did not leave any such effect on them, granting that such a procedure is legally permissible, the Government might cite witnesses to testify to the contrary; indeed, the very fact that the Government forfeited the security is proof *prima facie* that the words complained of had that tendency because they produced such an impression on Government. The late Mr. K. Vyasa Rao, in his book *The Press and the Press Act*, has brought out the difficulty of proving the negative. He says :

"There are negatives and negatives, negatives only in form which can be proved by positive evidence as, for instance, the statement that a man was not at a particular place at a particular time. But there are absolute negatives —which cannot by any practicable means be proved—as, for instance, the statement that an article cannot produce on any person a feeling of anger, resentment or contempt. Such a burden, being an impossible burden to discharge, the applicant practically goes to a tribunal that has no jurisdiction in the case. . . . When a Local Government says that it (the article) did appear to it that the words complained of had the tendency deprecated, all that the High Court has to do is to compare the words mentioned by the Government with the words appearing in the paper and see how far the same words are to be found in both places."

TRUE AND FAIR CRITICISMS SHUT OUT

That the Act is calculated to prevent the press from

offering even true and fair criticisms was established in *Emperor* vs. *Pothan Joseph* (56 Bombay, 472). In that case, the subject of complaint was two articles attacking the operations of the repressive ordinances. "The language of the articles," their lordships state, "is not in itself intemperate." They charged the officials with having ruthlessly applied the ordinances under which heavy sentences were being passed and which were abused by subordinate officials. "Instances of alleged abuses of powers are given and the article finished with an appeal to the Governor to put an end to the abuse of power, and to give effect to the assurances which the Government have given that the powers will not be abused." "The general tendency of the articles seems to us to be," they added, "not to criticise the policy of the Government of India in promulgating the ordinances or the legitimate operation of the ordinances by the Local Government, but to assert that the Local Government are deliberately abusing and misusing the powers conferred upon them by the ordinances and to appeal to them to cease from so doing." "The question we have to ask ourselves is," their lordships proceeded, "whether articles of that nature tend to bring Government into hatred and contempt. We have no evidence as to whether the facts asserted in the articles on which the charges, or some of the charges, are based are true or false ; and the Advocate-General has argued the case on the basis that truth is immaterial. We think in that contention he is right. There is no exception in Section 4 of the Indian Press Act as amended by the ordinance making truth and public good an answer to a charge under the Section as in the case of Exception (1) to Section 499 of the Indian Penal Code dealing with defamation. This court is not concerned to consider the

wisdom or lack of wisdom of a policy of suppressing criticism upon unlawful or injudicious acts of Government. . . . We have merely to apply the law as we find it. The effect of the ordinance seems to us to bring within Section 4 of the Indian Press Act every charge of misconduct by Government, whether such charge is well founded or not.''

Their lordships significantly proceeded :

"It has been argued in effect by Mr. Talyarkhan that it is better that misconduct, if any such there be, on the part of Government should be publicly exposed so that it may be remedied ; that in the long run such exposure will tend to reduce feelings of hostility towards Government, which feelings ultimately rest on the misconduct, rather than on the exposure of it ; and that it is in the public interest that Government should know the criticism directed against it. But in our view matters of that sort are outside the scope of our enquiry. They are really questions of policy. No doubt the legislature had such considerations in mind when they framed the Explanations to section 124-A of the Indian Penal Code dealing with sedition. The words of the Indian Press Act go beyond section 124-A of the Indian Penal Code and cover the tendency of an article, and not merely the creation of hatred or contempt or an attempt to create such feelings with which the Code deals."

FUTILITY OF ASSURANCES

It is useful to recall in this connection that when Lord Irwin promulgated the Ordinance, he issued an explanatory statement wherein he claimed that it was not designed to " restrict the just liberties of the press or check fair criticism of the administration.'' He also added that it was " one of emergency.'' Further, the Government of India, in reply to the Indian Merchants' Chamber, had assured the public that the Act was not intended to restrict the publication of news or the dissemination

of it. "If that is so," as Mr. A. R. Iyengar observed at the time, "the intention has certainly not been carried out either because of the legal difficulty of defining the exemption intended to be given or because of the desire to keep newspapers concerned at the mercy of those whose intentions may subsequently vary." Similar promises have been given before and, as Gokhale eloquently showed in the case of what happened to the assurances regarding the Press Act, the intentions of the Government of India "do not travel beyond the Local Governments and hundreds of magistrates all over the country, who come to be armed with the powers conferred by the law, do not think of the intentions or do not know anything about them." Sir Harold Stuart, the then Home Secretary to the Government of India, when he came to know how the Press Act was enforced, "was deeply grieved that this harassing over-zeal was being displayed by magistrates, who were enforcing the letter and not the spirit of the law."

RULE OF LAW SET ASIDE

The substitution of executive discretion for judicial proceedings is a violation of one of the cardinal principles of the rule of law—open trials. Trial means publicity in the press to the misdoings complained of against the executive. In a court of law, the issues have to be clearly formulated, questions argued, precedents quoted ; and the judge feels the responsibility in open court as a man whose oath of office imposes on him the duty of not only being just but seeming to be just ; he has the example of his distinguished predecessors constantly invoked before him ; and the eyes of his contemporaries the world over are on him ; all evidence available is scrutinised critically and

eloquent counsels expose points of injustice ; and the judge is exhorted constantly to discharge his duty in fear of God and disregard of man. Even if the editor prosecuted is sentenced, the cause gains because injustice is exposed. The tendency of modern enactments to bar or restrict judicial intervention to the narrowest limits possible is a most unhealthy symptom and nothing is more calculated to destroy the liberty of the subject than such a development.

SPECIAL PROTECTION TO STATES

All the criticisms made against the Press (Emergency Powers) Act of 1931 are applicable to the Indian States (Protection against Disaffection) Act of 1934. That Act, besides doing other things, incorporates a clause into the Press (Emergency Powers) Act whereby writings calculated to bring into hatred or contempt the Government of a State are to be treated in the same way as writings against the Government established by law in British India. This is a fresh handicap on the press in India and restricts its right to criticise the States' administrations. The practice whereunder British Indian papers, accused of offences against the Princes Protection Act of 1922, have to defend themselves often in States' courts has caused considerable hardship to them. Prosecutions, even in India, as happened in *The Riyasat* case, place the papers under a serious disadvantage. In that case, the prosecution was conducted and investigations were made by the State police in British India ; and it may be recalled that the magistrate was obliged to remark, in acquitting the accused, that " such are the prosecution witnesses and such is their evidence, that it seems to me if there was any conspiracy in this case, it was on the part of the

State police, the object being to incriminate Dewan Singh (the Editor) and to cripple *The Riyasat.*" If this is so, is it surprising that editors should seek to ensure that, whenever they are charged by a State with having committed an offence against it, the trial should take place, not in the State's courts, but in British India ? It is unfortunate that Mr. Kazmi's Bill to achieve this object was thrown out by the Assembly in March 1944.

II

EDITORS FACE THE WAR

The relations between the Government and the press for about a year after the declaration of the war were generally satisfactory. Towards the close of 1940, however, a sudden deterioration set in. On October 26, 1940, the Government of India issued a notification under the Defence of India Rules, prohibiting "the printing or publishing by any printer, publisher or editor in British India of any matter calculated, directly or indirectly, to foment opposition to the prosecution of the war to a successful conclusion or of any matter relating to the holding of meetings or the making of speeches for the purpose, directly or indirectly, of fomenting such opposition as aforesaid." Most editors felt that the order, if conformed to, would reduce the position of an editor to that of an automaton. The conditions that were sought to be imposed by that order were such as no self-respecting editor could submit to them; and editors, in order to preserve their rights which were fundamental to the maintenance of a free and independent press, gathered at Delhi on November 11th to take common action.

The Conference was presided over by Mr. K. Srinivasan, Managing Editor of *The Hindu*. It exposed the pretence that the order was aimed at preventing the

exploitation of the newspapers by the sponsors of the Satyagraha Movement. "A little introspection on the part of the authorities would have shown," the President said, "that it is they themselves who are attempting to exploit the newspapers to help them to control the political movement in the name of efforts to win the war . . . We must make it plain that we cannot and will not be parties to the suppression of all normal political activity in the name of the war."

Nor could it be said, that the press had at any time impeded war effort. Far from that being the case, the President demonstrated how, in many ways, the press had materially sided the Government. "We have all of us, without a word of dissent, helped the Government in their propaganda for their war effort in all possible ways and have allowed our columns to be devoted to the publication of reports of speeches and to long statements by officials and non-officials aimed at a vigorous prosecution of the war. We have gone further in permitting a generous use of space in our advertisement columns, often without payment, and in some cases at concession rates." "Those services," the President went on to emphasise, "under difficult circumstances owing to the rapidly rising prices of newsprint and the serious curtailment of the size of our papers, ought to have served as sufficient indications of our good faith even under the present trying circumstances." Mr. Srinivasan made an earnest appeal to the press to stand united. "We, in India," he said, "are painfully aware of the many differences in the political sphere. But I am glad to feel that in regard to the liberties of the press, differences of outlook or opinion are not likely to divide us. A free press with a full sense of responsibility must be allowed to function and it is our

business to suggest to the Government the right and only method of approaching us to help them in winning the war."

THE DELHI AGREEMENT

The Government were not slow to sense the gravity of the situation and the determination of the press to stand out for its rights at any cost in the interests of the press. Before the President finished his speech, he was enabled to announce that the method that obtained in Britain—voluntary censorship whereunder whatever restrictions were necessary in the interests of war were to be laid down by the Government in consultation with the representatives of the press. Government were ready to withdraw the order of October and accept the suggestion of the Conference that a small advisory committee of representatives of the press, resident in Delhi, shall be set up to advise the Government on any matters affecting the press, and they will recommend to Provincial Governments the constitution of similar advisory committees in the Provinces.

Here was the genesis of the All-India Newspaper Editors' Conference, (A.I.N.E.C.) the Standing Committee thereof, the Central Press Advisory Committee and the Provincial Committees.

The implementing of the arrangement — which has popularly come to be known as the Delhi Agreement— was by no means easy. There were difficulties in deciding as to which item of political news as such, was likely or calculated to impede war effort. These were discussed at a Conference of Press Advisers from the Provinces held at Delhi in December, 1940. The Central Press Advisory Committee submitted a memorandum to this conference in which it suggested that in respect of court proceedings

arising from the Satyagraha Movement, factual news of such proceedings save such parts thereof as had a prejudicial bearing on the successful prosecution of the war should be allowed to be published. The memorandum suggested that all matters concerning the press should be placed before the Advisory Committees for their opinion, that penal action against newspapers should be taken only after consultation with the committees, that it should be preceded by warnings and that warnings might be issued only when there had been undue or unwarranted publicity. Banner headlines, said the Committee, concerning featuring of news, should not be deemed *per se* inadmissible in case of newspapers which normally featured news in that way, the real test being the importance of the news.

The Government, apparently, were not satisfied with the state of things that obtained after the November Agreement. In a communication which Mr. Desmond Young, the then Chief Press Adviser, sent to the A. I. N. E. C., contended that while the Government had abided by the Agreement, a section of the press had repudiated it, that statements made by important Satyagrahis in courts, which clearly amounted to "prejudicial reports," had been published without press advice by newspapers of standing, that proceedings concerning comparatively obscure persons, which were of no real news value, had been featured and the Movement thereby advertised and that "the Government cannot agree to the press being used as a medium for the conveyance of orders and instructions regarding the future conduct of the Satyagraha Movement." "Nor can they agree to the publication of news which," Mr. Young added, "though factual, is given at great length and with more prominence than its actual news value to any section of readers

justifies and thus assists the Movement by advertising its progress." "As regards statements by Mahatma Gandhi," the Chief Press Adviser stated, "Government have no desire to suppress them unless they are calculated to impede the prosecution of the war or to provide the enemy with propaganda material, and will certainly give them special consideration in view of the respect in which Mahatma Gandhi is held in India and the interest which attaches to anything he writes." While asserting that the Government could not divest themselves of their responsibility, Mr. Young's letter concluded that Government "can only repeat that they will take as liberal a view as possible, bearing in mind that the right to free expression of opinion is one of the causes for which the war is being fought." "The successful prosecution of the war must, however, be their first consideration and they must remain the final judges of what is likely to impede or promote it."

The Standing Committee of the A.I.N.E.C. was equally emphatic in its protestations. At its meeting in February 1941, the Standing Committee re-affirmed "the determination of the press of India to strive for the freedom of the country without fear or favour and consequently to give legitimate publicity to news about the political movement in the country." The Committee further recorded "its opinion that the Indian Press is wholly opposed to the totalitarian doctrines of Nazism and Fascism and has no intention of hindering Britain's war effort from publishing news or views which will incite against her enemies." The Committee, in these circumstances, urged the Government to continue to give a fair trial to the Delhi Agreement.

The Government's reply was that as far as possible,

they would consult the Committees though they could not bind themselves to do so in all cases.

THE ADVISORY SYSTEM

Much of the difficulty that arose related to the treatment to be given to Gandhiji's statements. The Government alleged that the agreement earlier arrived at had been violated by papers and news agencies. Since there was misunderstanding on both sides, a new formula was arrived at. It ran : "No editor, whether of a newspaper or news agency, shall be under any obligation to refer any statement or report to the Press Adviser unless he considers it necessary to do so. In the event of the Government, whether Central or Provincial, holding publication of any matter by a newspaper or a news agency, to be in any manner objectionable, the matter shall, except in cases of grave emergency, be brought before the Local Press Advisory Committee and a warning issued, if necessary, thereafter. The Committee urges that no penal action should be taken without consultation with the Press Advisory Committee and that only in cases of deliberate and systematic infringement after preliminary warnings have been conveyed to the newspaper or the news agency concerned should such action be taken."

Both the Committee and the Government of India appear to have realised the need for mutual co-operation, each having sought to accommodate itself to the point of view of the other. The following resolution of the Standing Committee is significant in this respect :

"The Standing Committee recognises that the success of the Advisory system largely depends on a correct mutual understanding of the respective functions of the responsibilities of the Government on the one hand and

the members of the Committee on the other. The Standing Committee therefore suggests that a uniform system of procedure should be adopted for all meetings of Provincial Press Advisory Committees with representatives of Government where complaints are made against individual newspapers or matters affecting Government's relations with the press are considered. A senior official should attend all such meetings on behalf of the Government, and, after a full and frank discussion in the light of the Gentleman's Agreement between the two parties, the Committee's views, whether unanimous or divided, should be recorded on any matter brought before it. The Standing Committee expects the Provincial Press Advisory Committees to use their influence with the members of the press in the Provinces to build up and maintain the highest traditions of journalism. To the same end, the Standing Committee is concerned to establish and maintain contacts with Governments for the efficient discharge of the responsibilities of the press and expects Government to make the task easy by impressing on its representatives the need to show active sympathy and goodwill in its relations with the press."

The Government of India, one is glad to note, entirely endorsed the views expressed by the Committee and the recommendations made and agreed to communicate them officially to Provincial Governments with the request that they would do all they could to reciprocate. "The Government of India welcome in particular the suggestion," their reply ran, "that a uniform system of procedure should be adopted for all meetings of the Provinsial Press Advisory Committees which they believe should be based on the actual procedure that has been found to work successfully in certain Provinces. If the practice of oral dis-

cussion and prompt decision can be satisfactorily established, the Government of India themselves can imagine few circumstances in which it should not be possible for Governments to consult their Advisory Committees before taking action against the press."

PROVINCIAL GOVERNMENTS' ATTITUDE

Although thus, in principle, the Government and the press were agreed on the lines along which they could co-operate among themselves to mutual advantage, in practice many and serious difficulties arose. In the first place, the Provincial Governments, some of them, were in no mood at all to co-operate. From the outset, the U.P. and the Punjab Governments were hostile to the arrangement. They delayed the constitution of Advisory committees, and, when these were constituted, refused to co-operate with them. The success of the system, as was found in Madras and Bombay, depends on heart to heart talks and on a willingness on both sides not to insist on trifling points. The U.P. Government and the Punjab Government were not anxious to enter into such talks with leading press men. Political and communal considerations in some places stood in the way of the formation of Committees acceptable to all. Attempts were made in one province to force the President to nominate to them Government's ' yes men ' which, if they did not succeed in the way intended, resulted in the Committees becoming anaemic and helpless. The Governments continued to take action against papers without consulting the committees, warned and bullied the press, imposed heavy securities, forfeited them at will and not seldom suppressed papers.

In the U.P. *The National Herald* and *The Sainik* were

the victims. If these papers were to blame, they could have been brought into line with that of other papers in their conduct if only the Government co-operated. As a matter of fact, the U.P. Advisory Committee persuaded the editor of *The National Herald* to accept the Delhi Agreement and faithfully to work it. But the U.P. Government were under an obsession, as the editor pointed out, that *The Herald* could not but do propaganda for the Congress and for Gandhiji and Nehru somehow and anyhow ! In the Punjab also, a similar view seems to have obtained ; some editors cannot, in the view of certain officials, function save as agents of subversive propaganda. The Standing Committee of editors under the lead of the President and the President himself made persistent and continuous endeavours to disabuse the minds of the Provincial authorities of this obsession. A " Goodwill Mission," consisting of Sir Francis (then Mr.) Low and C. R. Srinivasan, was sent to the U.P. Government ; similar " neutral " agents were sent to the Punjab headed by Mr. E. W. Bustin, the Editor, *The Civil and Military Gazette ;* but the efforts were hardly satisfactory. They however continued to be made.

CENTRAL GOVERNMENT NERVOUS

Apart from the attitude of the Provincial Governments, other difficulties cropped up from time to time. In spite of all the genuine efforts made by Sir Richard Tottenham, the Home Secretary, and Mr. Young in the earlier days, the Government of India seemed to be nervous whether a policy of trust and co-operation might not after all fail in the face of the political pressure that may be exerted on the press by the leaders of the Congress. Every passing gust of excitement in the country threw them into

a paroxysm of doubts and fears, and they asked, from time to time, for public evidence of the ability of the press to retain its independence as much against attacks by political parties as against attacks from the side of the Government. And since the Committee of Editors had no such doubts, obsessions or mental reservations, they gave the Government evidence of their absolute independence of all influences as often as the Government wanted it.

A lot of kite-flying was at this time (1941) indulged in on the Government side to provoke the editors to proclaim their faith ; and they always stood the test. "It is one of the main functions of a free press," observed that shrewd statesman, Sir Akbar Hydari in his address to the Standing Committee in Calcutta on December 18, 1941, "to keep up the public morale in times of trouble. This means that the press must tell the truth, whether it be good or bad, but it also means that we must not put such emphasis on temporary reverses as to obscure the solid reasons for believing in the certainty of ultimate victory." Illustrating his point, Sir Akbar referred to the temporary successes of Japan and her innate weaknesses in materials and resources which were so poor as could not enable her to retain the fruits of her victories in the face of the combined resources of the United Nations, and said : "It rests with you, gentlemen, to see that these facts are presented in due proportion so that the public is assisted to preserve a balanced judgment in the midst of the confusing events around us." "I can assure you," he continued, "that we shall in the future, as in the past, be scrupulous purveyors of truth—you are entitled to expect that from us and we shall not fail you."

Few could have put the Government's case more

forcibly or convincingly. Mr. Srinivasan's response was equally clear and convincing. The press of India, he said, was animated by a single purpose, namely, that the editors should exercise their independent judgment on all issues and not to allow themselves to be exploited by any one for the furtherance of a particular cause. It is a great pity that Sir Akbar Hydari died shortly afterwards and the editors lost in him a great statesman whose understanding sympathy would have done much to strengthen mutual confidence between the press and the Government the foundations of which had been laid so well and truly by Messrs. Srinivasan, Brelvi, Devadas Gandhi, Low, Stephens, Desmond Young, Bustin and others.

The loss of Burma and Malaya created a difficult situation both for the press and the Government. The latter contended that the war had come home and that it was more than ever essential that the control over the press and notably anti-war political activities should be suppressed. The press advisory system, in the Government's view, had not altogether succeeded. The Committees were not prepared to recommend action stronger than warnings. The Advisory Committee had let off with a mere warning a paper which had given the scare headline—" Bombing in Bombay " for a news item which did not justify it. *The Bombay Sentinel* had to be suppressed without consultation because of the difficulty of getting the Committee to take drastic action. A formula had subsequently been evolved in Bombay to avoid such suppression. The Government were to take preventive action without consultation, but punitive action only after consultation. That formula, the Government of India contended, was inadequate. They did not desire suppression because it would entail heavy distress for the

employees. The demand of security too might be insufficient. The Government, in the circumstances, wanted freedom to take drastic action without waiting for the decision of the Committees which might mean locking the stable after the horse had been stolen. The Government cited a number of instances, which in their opinion were objectionable. A frank and free discussion ensued in May, 1942, between the Home Member and a delegation of the Committee. It seemed almost that the Delhi Agreement would be scrapped, so determined was each of the parties to maintain its independence. Finally, the Government withdrew their ultimatum, having satisfied themselves that the Committee decided effectively to pull up the black sheep among the press. The Committee also promised to do its best.

At its meeting in May, 1942, the Committee approved of the following "Instructions to Committees" (Press Advisory Committees) :

"The Standing Committee is satisfied with the manner in which Press Advisory Committees have generally functioned in accordance with the spirit of the understanding arrived at between the All-India Newspaper Editors' Conference and the Government.

" The Standing Committee, recognising however, that in the critical conditions now developing in the country, the Press Advisory system should be worked in such a way as to meet emergency requirements, recommends to all Press Advisory Committees to take proper and adequate steps to discourage the spread of alarmist rumours and writings tending to undermine the public morale or to weaken the spirit of resistance to the enemy.

" Press Advisory Committees are also requested to set a limit to the number of warnings for newspapers before

penal action is taken provided that these warnings have been formally given for serious and repeated offences.

"Press Advisory Committees, the Standing Committee feels sure, will continue to deal with cases placed before them on merits ; and where warnings have not had the desired effect, they will not stand in the way of further action being taken by the Government, provided that such action does not overstep the limits prescribed under the Indian Press (Emergency Powers) Act."

The Government accepted this action as satisfactory and the May crisis was thus tided over.

It was not long, however, before difficulties again cropped up. The Government, according to their version, got information about the end of June or so that the Congress contemplated inaugurating a civil disobedience movement and they again got fidgety about the attitude of the press. They sounded the views of the Standing Committee through the Chief Press Adviser and he was told that the Movement would be dealt with by the press as on the last occasion, factual news being published and propaganda excluded.

BOLT FROM THE BLUE

On August 8, when the Congress passed the "Quit India" resolution, the Government launched a sudden attack on the press. They passed rules placing a number of restrictions on the press and enabling the Provincial authorities to add to them, the effect of which was to vest in the Government all control over the gathering and publication of news at every stage. Papers were not to publish any news except those coming from registered correspondents ; and the latter could not send any without its having been passed for publication by the district censor who was the Collector or his deputy who may be a

minor official blissfully ignorant of anything about the press. A Government Press Note, dated August 10, stated *inter alia* that an editor " who opposes the measure taken by Government to avert or suppress that Movement, will be guilty of an offence against the law." As a result, a large number of papers suspended publication.

The Editors' Committee was not slow to take up the challenge. It met at New Delhi on August 24, 1942, protested against the violation of the Delhi Agreement in that the Committee was not consulted before the new rules were passed and requested the Government definitely to say whether they wanted the Delhi Agreement or not. " The number and nature of restrictions," the memorandum presented by the Committee to the Government stated, " seem to vary from Province to Province and there is in consequence lack of uniformity as regards procedure. To mention only a few of these, the Standing Committee regard the registration of correspondents as designed to bring them completely under the control of local officials and close to editors all avenues of receiving impartial reports of events directly from their correspondents. Compulsory press advising, the restrictions placed on the number of messages relating to the disturbances, on the nature of headlines and on the space to be devoted to news of these disturbances can have, in the view of the Standing Committee, but one meaning, namely, that Government seek, in the most comprehensive manner possible, to control at every stage not only the publication but even the character of factual news." " The press can at no time," the Committee's note continued, " abdicate its function of being the guardian of public interests and of the rights of the citizen. At the present juncture, when the legislatures are under suspension in a majority of the

Provinces, an extra responsibility is thrown on the press.'' The Standing Committee had always done its part and abided faithfully by the terms of the Delhi Agreement ; '' but in the restrictions recently brought into force, the Committee see,'' the note said, '' not only its virtual scrapping, but a dangerous tendency on the part of the Government to deny publicity to statements and reports supporting the Indian demand for freedom and legitimate political activities.'' '' There are several instances of press-advising and of censorship,'' the note proceeded, '' which, under no circumstances, can be deemed just and fair. The new restrictions seem designed, not so much to prevent information reaching the enemy as to prevent the public in India, Britain and the Allied countries from receiving a correct and objective account of the internal situation in this country.''

The situation that developed out of the Government's action was in no way calculated to promote the efficient prosecution of the war. It caused widespread bitterness and resentment. The Committee stated that it viewed with dismay the suspension of the publication of a large number of newspapers owing to the stringency of the new restrictions and the manner of their operation. The fact that newspapers found it impossible to perform their duties to the public, it added, increased unrest throughout the country, multiplied the force of rumour many times, '' and is a direct aid to enemy propaganda which can point to the disappearance of newspapers as proof of an oppressive regime.'' It advised Government to revert to the consultative procedure and work the Delhi Agreement as the most satisfactory method of tackling the situation in a *bona fide* manner.

A deputation of the Committee discussed the above

point with the Home Member who explained to the members the reasons why the Government had been forced to resort to control. The Government wished to prevent the press being exploited by leaders of the sabotage movement. The Government of India were not wedded to any particular method of securing their objective. In their reply to the deputation, they stated *inter alia* ; " A point which the editors chiefly criticised was that provision of the Government of India's order which affects their relations with their own correspondents and they emphasised that it was for them to decide what use to make of any material supplied to them, either by those correspondents or from other sources. If, however, that decision could not be left entirely to the editors themselves, they felt that it would be better for Government to achieve their object by arranging for all the material to be submitted for scrutiny by a special authority before publication, especially if means could be devised whereby responsible representatives of the press could themselves be associated with that scrutiny." If such an arrangement would succeed, the Government of India said they would drop the registration system and advise Provincial Governments to do likewise and work faithfully the Delhi Agreement if the press would, for its part, do likewise.

The Committee was satisfied with the Government's undertaking and issued a statement to the effect that " that a new procedure of consultative scrutiny in respect of certain categories of news is being evolved whereby Government will withdraw the existing restrictions."

THE BOMBAY SETTLEMENT

The plenary session of the All-India Newspaper Editors' Conference, which met at Bombay on 6th October, 1942, was a memorable one. It was stormy as well. The

newspapers which had suspended publication in August in consequence of the Government's restrictions constituted themselves into a separate group. This group seems to have felt that the Standing Committee had let them down and had compromised the independence of the press. A no-confidence motion in the President and the Standing Committee was promoted, but it failed. After the spirited challenge of the President, things quietened down and those who came to curse remained to pray.

Mr. Horniman, in his welcome address, gave the right lead in vigorous language. While he agreed that editors should not publish news of value to the enemy or of news calculated to incite people to unlawful activity or support such activity, they should have the completest freedom of action and could not let the press be converted into a mouthpiece of the bureaucracy from what it ought to be —the mouthpiece of the people. Pre-censorship must go, and he was glad to say that the Bombay Government had come to an understanding with the Press whereby the requirements of both the press and the Government were to be met without pre-censorship and on the basis of the Delhi Agreement. If the Government did not listen to reason, he suggested the application of the potent sanction open to them of declaring a complete black-out of all official news. Mr. Srinivasan, in his presidential address, explained the events and discussions leading up to the deputation to the Home Member. What he had asked Government to do in Delhi was to drop pre-censorship system which was " cumbrous, unsatisfactory and needlessly irritating to editors " and leave it to the editors to avoid exploitation and over-featuring of news about disturbances and act in conformity with " guide notes " drawn up with definiteness and clarity in the light of the

discussions between the representatives of the press and the Government.

Besides endorsing the points mentioned in the Standing Committee's memorandum to the Home Member, the resolution of the Conference on this subject ran :

" The Conference is opposed to any scheme of pre-censorship. Newspapers should be free to publish without press scrutiny objective accounts of any ' incidents ' in connection with the ' mass movement ' or disturbances. The Conference, however, considers it necessary that editors should exercise restraint in the method of presentation of such accounts and also to avoid the publication of anything which (*a*) incites the public to subversive activity, (*b*) conveys suggestions or instructions for illegal acts, (*c*) is in the nature of exaggerated reports or allegations calculated to excite popular feelings regarding excessive use or misuse of their powers by police, troops and other Government servants, or the treatment and conditions of detenus and prisoners, or (*d*) retards the restoration of the public sense of security.

" Deliberate departure on the part of any newspaper from the general policy laid down in this resolution may be dealt with by the Provincial Governments in consultation with Provincial Advisory Committees." .

THE PRESS APPLIES SANCTIONS

Although the Government accepted the Bombay settlement, there was considerable delay in implementing it. The Government of India's failure promptly to apply the Agreement to the Delhi Province, which is under their control, proved a bad lead to the Provinces. The Provinces were slow in acceding ; and when, with the exception of the Punjab Government, they did accept the settle-

ment, the acceptance was not, as Mr. Brelvi complained in his presidential address at the Madras session of the All-India Newspaper Editors' Conference, wholehearted and, in some cases, was qualified by restrictions and conditions alien to its spirit.

The Bhansali episode and the Government's action in respect of Gandhiji's fast, begun on February 10, 1943, demonstrated once again the Government's disregard of the Gentlemen's Agreement. There were riots in Chimur in the Central Provinces. The Government employed troops for putting down the revolt. It was alleged that after the suppression of the revolt, the troops misbehaved and even violated the sanctity of a number of women. Prof. Bhansali, an inmate of Sevagram, entered on a fast unto death and declared he would not break it unless Mr. Aney, then a Member of the Government of India, visited the place and made enquiries for himself regarding the truth or otherwise of the allegations. The Central Provinces Government passed an order under the Defence of India Rules suppressing all news about Prof. Bhansali's fast and secured, through the intervention of the Government of India, a similar order from the other Provincial Governments which forbade editors from publishing any news on the matter without press advice, including the news that such an order had been passed. "This double outrage," to quote Mr. Brelvi, "was naturally resented by the press, and the Standing Committee decided that the situation demanded an effective protest. On its recommendation, newspapers throughout the country, with very few exceptions, suspended publication for one day and refrained from publishing the New Year Honours List, all circulars from Government Houses, all speeches of the members of the British Government, of the Government

of India and of the Provincial Governments except portions thereof which contained decisions and announcements. The demonstration of solidarity was unprecedented in the history of the Indian Press. It had its effect. The Government at last yielded and the Government orders were withdrawn, though not without a tough fight between the press and the authorities. No sooner did the press apply sanctions than the Governments retaliated. At least in one Province, instructions went forth to the district officials that papers which had applied sanctions were not to be encouraged in any way, that advertisements and subscriptions should be withdrawn from them and that every facility hitherto given firmly denied and those orders were in force till the Government of India withdrew their orders.

The Delhi Agreement was again given the go by, this time in connection with Gandhiji's fast in February, 1943. On the eve of the fast, all Provincial Governments imposed pre-censorship on all statements, whether direct or indirect, and all reports of interviews or conversations with him or persons detained with him or having access to him. The President conveyed to the Government the protest of the Standing Committee against this rigid censorship, internal and foreign, but it had little effect. The Government continued to use, to quote the Standing Committee's resolution of July, 1943, their powers of censorship to suppress news and political views unpalatable to them, " as is clear, to quote only a few instances, in the ban imposed on the statement of Mr. C. Rajagopalachariar of 8th March, 1943, the mutilation of the main resolution of this Standing Committee of February, 1943, relating to Gandhiji's fast, and the statement of Mr. Arthur Moore of 13th February, 1943." The Standing Committee also protested against

" the Government of India's order requiring all matter relating to India written or spoken by Mr. Louis Fischer to be submitted to pre-censorship as such a blanket ban is unjust, arbitrary and totally opposed to the letter and spirit of the Government's agreement with the press." The restrictions continue and are being added to. Pre-censorship was imposed recently on *The Amrita Bazar Patrika* editorials to prevent agitation, among other objects, and was withdrawn only after some months and as a result of the strongest protests. A ban was placed on the publication of the report of the Press Conference Mrs. Sarojini Naidu held at Delhi in which she exposed the untruth that the Congress or its leaders were pro-Japanese. Pre-censorship has been imposed on *The Hindustan Times* and *The National Call* in respect of all references to Mrs. Naidu. The reports of the Convenors of the Provincial Advisory Committees are full of instances in which the Government have objected to the wording of news, headlines and news items in many cases most innocent.

THE PRESS STANDS VINDICATED

It should not be supposed from what has been said above that the Conference or the advisory system which it has evolved has not been useful. The Conference is composed, as Mr. Srinivasan pointed out in his address at Madras, of all important elements in the field of Indian journalism. " We represent in this Conference," he said, " every shade of opinion and we are bound by a spirit of comradeship and earnestness. Our one guiding factor during these three years has been an anxiety to develop and preserve the highest traditions of journalism. For the first time in the history of the press in India, the prin-

ciple that editors of newspapers could be depended upon to act in concert for discharging the responsibilities as well as safeguarding the rights of the press as a whole found a measure of practical recognition at the hands of the Government.'' With all its defects, the consultative system has yielded useful results. '' I have not the slightest hesitation in acknowledging,'' Mr. Brelvi stated in his address, '' that some officials of the Government of India and certain Provincial Governments have endeavoured to keep alive the consultative machinery for ordinary purposes. Our grievance, however, is whenever it has suited them, they have shown scant respect to the Delhi Agreement.'' '' Some of them, again,'' he added, '' have contended that there are no statutory restrictions against the press and that editorial comment has been free. The question, however, is not as to how many statutory restrictions there are. The fact is that whenever Government want, under the convenient Defence of India Rules, they promulgate restrictions on the press which, though of a temporary character, are no less indefensible encroachments on our liberty.'' '' As regards freedom of comment,'' he said, '' the order served regarding comments on Gandhiji's fast and the recent action taken against *The Amrita Bazar Patrika* are an eloquent proof of the fact that comment is free only during the pleasure of the Government.''

That the press in India does not deserve this treatment is evident from the retiring Viceroy, Lord Linlithgow's farewell address to the Indian legislature. '' Occasions there may have been,'' his Lordship observed, ''when there were differences of view on matters connected with the press ; misunderstandings there may have been from time to time. But I remain deeply grateful to this insti-

tution for its fairness ; its eager anxiety to serve the public ; its concern to observe, and if possible to improve the best traditions of journalism, and I would not like to leave India without paying this public tribute to it, and to that hard-working body of intelligent and able men by whom India is so well served in the press.''

THE FUTURE OF THE PRESS

Although, as the preceding pages have shown, the press in India has been carrying on an unequal struggle with the Government, it is a most hopeful feature in the situation that none of its leaders is discouraged. Every new weapon forged by the Government, every fresh campaign of persecution launched, every intensification ordered of the war on the press has only served to throw up new martyrs on its side and demonstrate the skill, resourcefulness, devotion to duty and success with which the press has been going about its business.

Inspired by the justice of their cause, and nerved by the nation's faith in them, Indian journalists have been marching from success to success. What Junius wrote of the achievements of the press in the dark days of despotism in Britain has been true, *mutatis mutandis,* of the Indian press as well in the past hundred years and more of its active existence. " They who conceive that our newspapers are no restraint upon bad men or impediment to the execution of bad measures,'' runs a celebrated passage in the writings of that immortal journalist, " know nothing of this country. In that state of abandoned servility and prostitution, to which the undue influence of the Crown has reduced the other branches of the legislature, our ministers and magistrates have in reality little punishment to fear and few difficulties to contend with beyond

the censure of the press and the spirit of resistance which it excites among the people.'' This is consolation No. 1 which the men of the press in India cherish.

There is another consolation which too serves to hearten them and make them glory in an atmosphere of gloom. If, in a country like England where, as Lord Ellenborough once proudly proclaimed, " the law of the land is a law of liberty,'' it took over four centuries of bitter struggle for the press to establish its freedom, what reason have we to feel discouraged with the results we have so far achieved in less than three quarters of a century ? The Tudors and the Stuarts kept in operation a rigorous censorship of the press and sought to control printing and publication. The Star Chamber imposed a licensing system in 1637. " The infamous Lord Chief Justice Scroggs, in the corrupt judicial times of Charles II,'' as Sir Alfred Robbins has pointed out, " laid it down from his high seat, as the spokesman of twelve fellow-Court-chosen judges, that it was criminal at common law to publish any public news, whether true or false, without the King's licence. It was indeed the opinion of Scroggs, concerning ' scribblers who write to eat,' as he pleasantly described journalists of those days, that ' to publish any newspaper whatever was illegal, and showed a manifest intent to the breach of the peace.' The English press had to fight every limb of government—the executive, the judiciary and the legislature. All of them alike maintained " the absolutist doctrine that to speak ill of the Government of the day was a crime, and that censure of the King's ministers was a reflection on the King himself, and, therefore, punishable by law.'' In those days, moreover, " judges were the King's ready instruments and they inflicted penalties of fine, imprisonment and the

pillory on those who dared to pen, print or publish what their patrons and paymasters detested.'' The Commons, moreover, was a hot-bed of placemen and the doctrine of privileges was abused to silence critics in the press, though, thanks to the enterprise of Stockdales, parliament was forced to yield. Thus, even in England, as Lord Chief Justice Cockburn wrote in 1869 (*Waxon* vs. *Walters*), " the liberty of a public writer to comment upon the conduct and motives of public men has only recently been recognised.''

There is yet a third consolation which inspires, in the members of the press, both courage and faith to fight for their rights fearlessly and relentlessly. The press today is something infinitely more than the Fourth Estate which hitherto used to be the highest status assigned to it. The annihilation of distances, the ever increasingly closer economic interdependence of countries and communities, the growth of international trusts and cartels, resulting from increases in population and betterment of the standards of living and sustained by mass production and widened markets—these have invested the press with a new significance. The press in relation to society is as essential as the railways, the telegraph and the telephone. It serves to sustain the basis of social order. Paralyse the press, and not all the Defence Regulations will help you prevent the growth of alarm and despondency. In relation to the individual, the press is the citizen's secretariat. It ' puts up ' all the relevant papers before him in orderly ' files ' with appropriate ' notes ' and enables him to dispose of his business quickly and efficiently, helping others thereby to do likewise. In the conditions of the world today, Milton's noble exclamation—" Give me the liberty to know, to utter and to argue, freely according to con-

science, above all liberties ''—has a new significance. So is it the case with Lord Erskine's dictum—'' other liberties are held under governments but the liberty of opinion keeps governments themselves in due subjection to their duties.''

Today, enlightened opinion the world over recognises that the press, as the preserver of the citizen's liberties and the subserver of his interests in every sphere of life, deserves greater freedom than the individual citizen ; and this recognition is finding expression both in judicial decisions and administrative acts. '' The liberty of the press,'' wrote Sir William Blackstone in his *Commentaries,* '' is indeed essential to the nature of a free state ;'' and if, as events suggest, the converse of that proposition is also true, namely, that a free society is an essential prerequisite to a free press, the Indian press as the proceedings of the All-India Newspaper Editors' Conference have amply demonstrated, has not shrunk and will not shrink from seeking that objective. The shackles of the press will not, however, fall off nor its faults disappear until, as Dr. D. W. Desmond has pointed out in his book, *The Press and World Affairs,* '' the almighty reader rises in his majesty and demands an unobstructed news channel and a press made to fit higher ethical and technical standards. That demand he can make effective by accepting the better journalism where he finds it, and so encouraging its growth and extension.''

In the meantime, the country may rest assured that so far as the press in India is concerned, our papers will continue to be, as they are, '' organs of opinion and criticism, representatives of the people, defenders of the public interest, champions of liberty.''

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